

## REMARKS

The Applicant notes that claims 38-41, 43, 46 and 47 are withdrawn from further consideration as being directed to nonelected species. Please note that those claims are now canceled, without prejudice, from this application.

### 35 U.S.C. §§ 112

Claims 23, 28, 29, 34, 42, 44, 45, and 48 are rejected under 35 U.S.C. §§ 112, first paragraph as failing to comply with the written description requirement. Specifically, the Office Action alleges that the claimed features are not disclosed in the original specification. The Applicant respectfully traverses these rejections.

With respect to claims 23 and 29, the Examiner alleges that the "elected species 22A-22C and their descriptions in the specification do not teach that the blade 11 extends parallel to and coincident with the longitudinal axis," and that the "the first and the second blades each extend toward and parallel to and coincident with the longitudinal axis" are not disclosed in the original specification. In response, the Applicant specifically draws the Examiner's attention to paragraph [104] which states:

As can be seen in Figs. 22A-C, according to this embodiment, the blade 11 comprises a pair of blades 11 which are both located within the interior region 34 of the tubular member 6. The pair of blades 11 lie in and define a first plane P1 which is coincident--although this is not required--with the longitudinal axis 15 of the device 5. The supporting edge of each blade 11 is formed from a portion of the side wall of the tubular member 6. That is, a diagonal cut C is made in the side wall of the tubular member 6 from the second end 9 toward, but not all the way to, the first end 7, i.e., the cut C only extends generally less than half way along the side wall. Thereafter, the free end of the cut side wall is bent inwardly along a fold line F, extending parallel to the longitudinal axis 15 of the apple coring device 5, such that the inwardly directed triangular side wall portion forms the cutting blade 11. The substantially radially inwardly facing free end of each blade 11 is spaced from the longitudinal axis 15 of the device 5 by a distance of between about 0.125 and 0.75 inches or so. The first end 7 of the tubular member 6 is affixed to the handle 8 in a conventional manner. (Emphasis added.) Also see Fig. 22B which clearly shows such features.

In view of the above disclosure in the specification, the Examiner is clearly wrong and there is ample support for the limitations of claims 23 and 29, as presently recited. With respect to the features of claims 43-45 and 48, while the Applicant disagrees with the Examiner, the Applicant elects to cancel those claims in order to expedite allowance of this application. In view of the above, the Applicant respectfully submits that all of the raised 35 U.S.C. §§ 112, first paragraph, rejections are traversed and should be withdrawn at this time.

With respect to the newly added limitation to claim 23, this feature was recited in claim 29 and thus was clearly searched and thus is not a new limitation that would require any further search and/or consideration by the Examiner.

### 35 U.S.C. § 103(a)

Claims 23, 28, 29 and 34 are then rejected, under 35 U.S.C. § 103(a), as being unpatentable over Bartholomew, Jr. '698 (United States Patent No. D251,698) in view of Rink '939 (United States Patent No. 3,127,939) or James '686 (United States Patent No. 6,904,686) or Rosenbloom '116 (United States Patent No. D130,116). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the above amendments and the following remarks.

Before discussing the applied prior art in detail, the Applicant would first like to summarize the inventive aspects of the presently claimed invention. As presently claimed, the present invention relates to and covers a fruit coring device comprising a handle, and a tubular member having first and second opposed ends with the tubular member having an interior cavity and defining a longitudinal axis extending longitudinally through a center of the tubular member. The handle is connected adjacent the first end of the tubular member and the second end of the tubular member defines a circular and planar cutting edge. At least one blade has a planar blade cutting edge, the at least one blade is formed by a cut formed in a sidewall of the tubular member *thereby form a gap in the circular and planar cutting edge.*

The cut sidewall being bent inward into the interior cavity of the tubular member to form the at least one blade such that the at least one blade *extends toward and parallel to and coincident with the longitudinal axis and is solely supported within the interior cavity by a side wall of the tubular member.* The planar blade cutting edge lies in a plane defined by the circular and planar cutting edge.

Turning now to the applied art, Bartholomew, Jr. '698 relates to a grass transplanter—not a fruit coring device as presently claimed—which includes a tubular member with first and second diametrically opposite open ends. The grass transplanter has a U-shaped handle and a pair of “foot pegs” attached to a trailing second open end of the tubular member. The leading first end of the grass transplanter also includes a pair of inwardly directed arms for engaging with the ground.

In view of the above disclosure, it is to be noted that Bartholomew, Jr. '698 fails to in any way teach, suggest, disclose or remotely hint at “at least one blade being formed by a cut formed in a sidewall of the tubular member *thereby form a gap in the circular and planar cutting edge, as presently claimed.* That is, Bartholomew, Jr. '698 does not disclose any gap in the “cutting edge” of the grass transplanter. Moreover, based upon the disclosure, the Applicant is unsure whether or not the two arm(s) extend parallel to and coincident with the longitudinal axis, as presently recited in claims 23, 28, 29 and 34.

With respect to James '686, the Applicant first notes that James '686 relates to an O or oval shaped member (see FIGS. 3 for example) not a circular shaped member and further James '686 states that the slat ripper 10 has “a cutting means 40 fixedly disposed within the body chamber 70 between and attached to the inside faces of the top wall 20 and the bottom wall 30, wherein the functional end of the cutting means is exposed only to the internal portion of the chamber 70. As more particularly detailed in Figs. 1, 4 and 5, the cutting means further

comprises a slot 25 that is cut into the back end of the top wall 20 wherein the cut wall material is bent perpendicularly to the top wall and curved inwards toward the inside face of the bottom wall. The inner edge of the cut top wall material is sharpened to form a blade edge 41 facing inwards towards the front end 60 of the chamber 70...the bottom portion of the cut top wall material is curved around to lay flat upon the inside face of the bottom wall 30"—see column 2, line 65 to column 3, line 15. (Emphasis added.)

Due to the unrelatedness of Bartholomew, Jr. '698 and James '686 with one another and with the presently claimed invention, the Applicant first fails to see why—**absent the improper use of hindsight**—one skilled in the art would combine the grass transplanter of Bartholomew, Jr. '698 with the slat ripper of James '686 in an attempt to solve a problem relating to removing a core from fruit? **Clearly, the only explanation is the improper use of hindsight.** If the Examiner disagrees with the Applicant's view, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In any event, any resulting combination would clearly have the *cutting edge located within the grass transplanter* of Bartholomew, Jr. '698 and not arranged so that "the planar blade cutting edge lies in a plane defined by the circular and planar cutting edge," as presently claimed!

With respect to Rink '939, the cutting edges 14a are also do not lie in the plane defined by the circular and planar cutting edge, as presently claimed.

With respect to Rosenbloom '116, the inwardly directed blade does not appear to have (1) a planar blade cutting edge; and (2) the blade is inclined with respect to the longitudinal axis of the tubular member and thus not parallel to and coincident with the longitudinal axis, as presently claimed.

In view of the above, the Applicant acknowledges that the additional references of Rink '939, James '686 and/or Rosenbloom '116 may arguably relate to the features indicated by the Office Action. Nevertheless, the Applicant respectfully submits that the combination of the base reference of Bartholomew, Jr. '698 with this additional art of Rink '939, James '686 and/or Rosenbloom '116 still fails to in any way teach, suggest or disclose the above distinguishing features of the presently claimed invention. As such, all of the raised rejections should be withdrawn at this time in view of the above amendments and remarks.

Next, claims 23, 28, 29 and 34 are rejected, under 35 U.S.C. § 103(a), as being unpatentable over McClean '074 (United States Patent No. 358,074) in view of Rink '939 or James '686 or Rosenbloom '116 and in further view of Sajnaj '399 (United States Patent No.

2,249,399) or Siersdorfer '722 (United States Patent No. 419,722). The Applicant acknowledges and respectfully traverses the raised obviousness rejection in view of the following remarks.

McClean '074 relates to a design of a pie dough cutter which includes an outer ring with two ends. The pie dough cutter has a total of eight blades that axially span from the "handle" to the second end of the outer ring and radially extend toward the longitudinal axis from the outer ring, not one or two blades as currently claimed. Further, it should also be noted that each of the blades is coupled or connected to both the outer ring (i.e., an extension of the tubular member) and the "handle"—not just the tubular member as presently claimed. More specifically, the outer ring spans in the plane parallel to the cutting plane. These features are not recited in claims 23, 28, 29 and 34.

With respect to James '686, the Applicant first notes that James '686 relates to an *O or oval shaped member* (see Fig. 3 for example) not a circular shaped member and further James '686 states that the slat ripper 10 has "a cutting means 40 fixedly disposed within the body chamber 70 between and attached to the inside faces of the top wall 20 and the bottom wall 30, wherein the functional end of the cutting means is exposed only to the internal portion of the chamber 70. As more particularly detailed in Figs. 1, 4 and 5, the cutting means further comprises a slot 25 that is cut into the back end of the top wall 20 wherein the cut wall material is bent perpendicularly to the top wall and curved inwards toward the inside face of the bottom wall. The inner edge of the cut top wall material is sharpened to form a blade edge 41 facing inwards towards the front end 60 of the chamber 70...the bottom portion of the cut top wall material is curved around to lay flat upon the inside face of the bottom wall 30"—see column 2, line 65 to column 3, line 15. (Emphasis added.)

Due to the unrelatedness of McClean '074 and James '686 with one another and with the presently claimed invention, the Applicant first fails to see why—**absent the improper use of hindsight**—one skilled in the art would combine the pie dough cutter of McClean '074 with the slat ripper of James '686 in an attempt to solve a problem relating to removing a core from fruit? **Clearly, the only explanation is the improper use of hindsight.** If the Examiner disagrees with the Applicant's view, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references of McClean '074 and/or James '686, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In any event, any resulting combination would clearly have the *cutting edge located within the pie dough cutter* of McClean '074 and not arranged so that "the planar blade cutting edge lies in a plane defined by the circular and planar cutting edge" and secondly, the blades

would still be coupled or connected to both the outer ring (i.e., an extension of the tubular member) and the "handle"—not just side wall of the tubular member, as presently claimed!

With respect to Rink '939, the cutting edges 14a also do not lie in the plane defined by the circular and planar cutting edge, as presently claimed.

With respect to Rosenbloom '116, the inwardly directed blade does not appear to have (1) a planar blade cutting edge; and (2) the blade is inclined with respect to the longitudinal axis of the tubular member and thus not parallel to and coincident with the longitudinal axis, as presently claimed.

With respect to Sajnaj '399, the blades are arranged in a predetermined fashion in which the tangential axes of each blade on each cutting edge do not appear to coincide in such a way to be aligned in one single tangential axis; and each blade is not formed by a cut formed in a sidewall of the tubular member. Further, as detailed in Figs. 3 and 4 and described in column 2, lines 23 through 29, the handle includes "parallel arms transversely curved to follow the shape of the outer blade and secured to its outer surface upon diametrically opposite sides thereof, in a manner to space the upper portion 5 of the handle a considerable distance above the blades, to allow for ample thumb and finger receiving space." Such features are clearly not recited as presently claimed.

With respect to Siersdofer '722, the blades are also arranged in a predetermined fashion in which the tangential axes of each blade on each cutting edge do not appear to coincide in such a way to be aligned in one single tangential axis; and each blade is not formed by a cut formed in a sidewall of the tubular member, as presently claimed.

In addition to the above remarks, the Applicant acknowledges that the additional references of Rink '939, James '696, Rosenbloom '116, Sajnaj '399 and/or Siersdofer '722 may arguably relate to the feature(s) indicated by the Office Action. Nevertheless, the Applicant respectfully submits that the combination of the base reference of McClean '074 with this additional art of Rink '939, James '696, Rosenbloom '116, Sajnaj '399 and/or Siersdofer '722 still fail to in any way teach, suggest or disclose the above distinguishing features of the presently claimed invention. As such, all of the raised rejections should be withdrawn at this time in view of the above remarks.

In view of the foregoing, it is respectfully submitted that this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the Bartholomew, Jr. '698, McClean '074, Rink '939, James '696, Rosenbloom '116, Sajnaj '399 and/or Siersdofer '722 references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion

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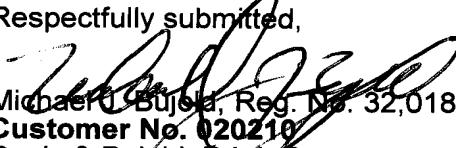
and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,

  
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ANNOTATED SHEET

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